



Safety Creates Sustainability

WW GROUP LTD PTY

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Terms & Conditions of Cartage

Definitions

1. In these terms and conditions:

'ADG Code' means The Australian Code for the Transport of Dangerous Goods by Road & Rail (or its successor).

'Carrier' means WW Group Pty Ltd ACN 169 896 968 and its Related Bodies Corporate (as that term is defined in the *Corporations Act 2001*).

'Consignor' means the person, firm, organisation, corporation, trustee of a trust or other entity (including its successors and permitted assigns) requesting the Carrier to provide the Services.

'Dangerous Goods' means goods classified as 'Dangerous Goods' by the ADG Code and also includes, without limitation, goods that are (or may become) dangerous, noxious, flammable, explosive, or radioactive that may cause damage to property and/or injury or death to any person or, in the opinion of the Carrier (acting reasonably), are likely to cause damage to property and/or injury or death to any person.

'Goods' means any and all plant, machinery, equipment, goods, livestock, articles, items, and/or cargo (together with any packaging, containers, and/or pallets) accepted by the Carrier for transportation from one location to another location by way of the Carrier's Services (but excluding good sold by the Carrier to the Consignor).

'Recipient' means the person to whom the Goods are delivered.

'Services' means any and all services supplied by the Carrier to the Consignor, including, without limitation, packing, unpacking, loading or unloading the Goods from any vehicle or vessel, cartage, transport or storage of any Goods on behalf of the Consignor, and any other services provided by the Carrier to the Consignor from time to time (but excluding the delivery of goods sold by the Carrier to the Consignor and services incidental thereto).

'Sub-Contractor' means any person, firm, organisation, corporation, trustee of a trust or other entity the Carrier arranges to supply Services in relation to the Goods (including their servants, agents, employees or sub-contractors).

Operation

2. These terms and conditions apply to all contracts for the provisions of Services between the Consignor and the Carrier.

No liability as common carrier

3. The Carrier is not a common carrier and will accept no liability as such. The Carrier accepts Goods for carriage only upon the terms and conditions set out herein and shall not be bound by any agreement to vary these terms and conditions unless such agreement is in writing and signed by an authorised officer of the Carrier.

4. The Carrier, in its sole discretion, reserves the right to refuse to handle, store or transport any Goods (or any class of Goods) without assigning any reason for such refusal.

Pricing and charges

5. At the Carrier's sole discretion, the price for the Services shall be either:

- (a) as indicated on the Carrier's current price list (as amended from time to time);
- (b) as indicated on invoices provided by the Carrier to the Consignor in respect of the Services;
- (c) the Carrier's quoted price (subject to clause 7) which shall be binding on the Carrier provided that the Consignor accepts the Carrier's quotation in writing within thirty (30) days.

6. Every special instruction to the effect that charges will be paid by the Consignor shall be deemed to include a stipulation that if the Consignor does not pay the said charges within seven (7) days of delivery or attempted delivery of the goods, then the Consignor shall pay the said charges including any additional charge for each call made in an attempt to effect delivery.

7. The Carrier may charge freight by weight, measurement or value and may at any time reweigh, revalue or remeasure or require the Goods to be reweighed, revalued or remeasured and in the event of any increases being disclosed in the weight, value or measurement of any of the said Goods the Carrier may make additional charges proportional to such increase so disclosed.

8. All uncrated plant, machinery, and/or equipment shall be deemed to have a height of 2.6 metres and shall be measured and charged accordingly.

9. The Consignor authorises the Carrier to store or to arrange for the storage of the Goods at any place and at any time as the Carrier considers appropriate and at the sole risk of the Consignor and the Consignor undertakes to pay any charges in respect thereof upon demand.

The Consignor is responsible to effect and meet the cost of any insurance cover that is deemed necessary.

If any Goods offered for transport are subject to any law or regulation relating to customs, excise or tax, then the Consignor warrants and represents that any customs, excise duty or tax, and any other costs and charges in relation to the Goods, have been fully paid. If, for whatever reason, the Carrier becomes liable to pay any monies in respect thereof in performance of the Services, then such monies shall be repaid by the Consignor to the Carrier on demand.

Consignor's warranties and obligations

12. The Consignor warrants and represents that:
- (a) it has complied with all laws and regulations in relation to the nature, conditioning, packaging, and carriage of the Goods, including, without limitation, the ADG Code;
 - (b) the Goods are fully, adequately and accurately described in writing, whether on a consignment note or otherwise, and fully, adequately and accurately detail the nature and value of the Goods, as well as the requirements of any relevant authority and any other relevant information required by the Carrier (including, without limitation, the weight and measurements of the Goods);
 - (c) subject to clauses 13 and 14, the Goods are not Dangerous Goods;
 - (d) the Consignor is the owner of the Goods, or is the duly authorised agent of the person who owns, or has an interest in, the Goods and is authorised to provide the Goods to the Carrier; and
 - (e) the Consignor has in place, and will maintain, an insurance policy to cover any and all loss of, or damage, to the Goods (however so caused) while the Goods are at the Consignor's risk.

Dangerous Goods

13. The Consignor acknowledges that it shall not tender for transport any Dangerous Goods, unless otherwise agreed in writing by the Carrier.
14. If, in its sole discretion, the Carrier agrees to accept for transport any Dangerous Goods:
- (a) such Dangerous Goods must be accompanied by an accurate, written declaration that details the nature and value of the Dangerous Goods (as well as the requirements of any relevant authority and any other relevant information required by the Carrier); and
 - (b) the Consignor warrants that it has complied with all laws and regulations in relation to the nature, conditioning, packaging, and carriage of the Dangerous Goods, including, without limitation, the ADG Code.
15. If, in the opinion of the Carrier, the Dangerous Goods accepted for transport are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature (whether to persons or property), the Carrier may, at any time and at the Consignor's cost, destroy, dispose of, abandon or render harmless the Dangerous Goods, without any liability to the Consignor or Recipient whatsoever.

Route and deviation

16. In provision of the Services, the Consignor acknowledges that the Carrier has right to use, or may use, any method or methods to handle, carry or store, or cause to be handled, carried or stored, the Goods, or to carry or cause to be carried, the Goods, in its absolute discretion, and the Consignor is deemed to have authorised such method or methods, unless it is expressly agreed that the Carrier is to use a particular method for handling, transporting or storing the Goods.
17. The Consignor authorises any deviation from the usual route of carriage that may, in the sole discretion of the Carrier, be considered preferable or necessary.

Delivery

18. Delivery will be made within normal business hours between Monday to Friday, 8.00am to 5.00pm only (unless otherwise agreed).
19. The Carrier shall deliver the Goods to the Consignor's nominated address and it is expressly agreed that the Carrier reserves the right to arrange transport of the Goods by any means in its sole discretion.
20. Subject to clause 21, delivery is deemed to occur if, at the Consignor's nominated address, the Carrier obtains from the Recipient (or any person on behalf of the Recipient) an acknowledgement of delivery.
21. If the Consignor's nominated address for delivery is unattended or the Recipient fails to take delivery of the Goods (for whatever reason), the Carrier, in its sole discretion, may:
- (a) deposit the Goods at the Recipient's address;
 - (b) store the Goods; or
 - (c) return the Goods to the Consignor;
- and it is expressly agreed that the Carrier's actions under any of subclauses 21(a) to 21(c) will constitute delivery.
22. The Carrier is entitled to charge:
- (a) a reasonable fee for storage and/or redelivery charges in the event the Recipient does not, or is unable to, accept delivery of the Goods; and
 - (b) the Consignor for any costs and/or expenses which the Carrier incurs as a result of any delay in the delivery of the Goods caused by the Consignor, its agents, or employees or the Recipient.
23. Goods may be onforwarded by any means at the discretion of the Carrier.
24. The Carrier does not undertake to collect and/or dispatch the Goods at any particular time, unless otherwise specified in writing. The Consignor acknowledges and accepts that any estimated delivery time provided by the Carrier is an estimate only and the Carrier will not be liable for any loss or liability suffered or incurred by the Consignor as a result of any incorrect delivery, delay in delivery, or non-delivery of the Goods.
25. The Carrier may its discretion detain and/or stop the carriage of any Goods in transit and may require the Consignor retake possession of the Goods at any time.
26. The Consignor accepts that the Carrier may deliver the Goods by instalments and require payment for each separate instalment in accordance with these terms and conditions.
27. The Consignor acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any incorrect delivery, delay in delivery or non-delivery of the Goods.

Risk

28. The Consignor acknowledges that risk of damage, loss and/or deterioration to the Goods shall at all times be at the risk of the Consignor and that it is aware that the Carrier is not an insurer of Goods (either warehoused or in transit) and that the Carrier does not effect insurance on behalf of the Consignor, unless otherwise agreed in writing.
29. If the Consignor requests that the Goods are delivered either to an unattended location, or to a location without the Recipient (or any person on behalf of the Recipient) being in attendance at the time of delivery, the Consignor acknowledges that the Carrier will deliver the Goods as requested at the Consignor's risk.

Claims

30. To the extent permitted by law, notice in writing of any claim intended to be made in relation to delivery (or non-delivery) of the Goods must be given to the Carrier within fourteen (14) days of the date of delivery, or, in the case of non-delivery within thirty (30) days from the date the Services should have been completed, or the Goods should have been delivered, and unless so given and made the claim however so made shall be absolutely extinguished and will not be enforceable against the Carrier.

General lien

31. The Carrier shall have a general lien on the Goods (and any documents in respect of the Goods) in respect of all unpaid charges and other monies due to the Carrier whether under these terms and conditions or otherwise and whether such Goods have at any time left the possession of the Carrier until such time as the Consignor has made payment in full.
32. Without prejudice to any other rights or remedies the Carrier may have, whether under these terms and conditions or at law, the Carrier may:
- (a) store the Goods as the Carrier sees fit and at the Consignor's risk and expense;
 - (b) sell the Goods (or any part thereof) with notice to the Consignor by way of public auction or private treaty and apply the proceeds to discharge the lien, together with all charges, costs and expenses in respect of the detention, storage and sale of the Goods (or any part thereof), and shall render the surplus (if any) of the proceeds of sale and Goods that remain unsold to the Carrier.

Security/charges

33. The Consignor charges in favour of the Carrier all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Consignor owns at present and in the future with payment of all monies which are now or in the future become owing to the Carrier whether pursuant to these terms and conditions or otherwise until all such monies are paid in full by the Consignor.
34. The Consignor charges in favour of the Carrier all of its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Consignor owns at present and in the future with payment of all monies which are now or in the future become owing to the Carrier whether pursuant to these terms and conditions or otherwise until all such monies are paid in full by the Consignor.
35. As security for the payment of the amount of its indebtedness to the Carrier from time to time, the Consignor irrevocably appoints as its duly constituted attorney the Carrier's company secretary from time to time to execute in the Consignor's name and as the Consignor's act and deed any real property mortgage, bill of sale or consent to any caveat the Carrier may choose to lodge against real property that the Consignor may own in any Land Titles Office in any state or territory of Australia, even though the Consignor may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Consignor (in the event that there is no default by the Consignor in carrying out its obligations hereunder).
36. Where the Consignor has previously entered into an agreement with the Carrier by which the Consignor has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009*) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Consignor under this agreement. The Carrier may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

Indemnity

37. The Consignor agrees to indemnify the Carrier and keep the Carrier indemnified from and against all liabilities, claims, damages, losses, costs and expenses that the Carrier may suffer or incur at any time, directly or indirectly, as a result of:
- (a) any breach of the warranties set out in clause 12;
 - (b) loss of, or damage to, any property and/or injury or death to any person (whether or not caused by any Dangerous Goods) during or resulting from the performance or purported performance of these terms and conditions;
 - (c) any claim by a third-party regarding ownership of the Goods (or any part thereof);
 - (d) any other thing in relation to which the Consignor has assumed the risk or liability under these terms and conditions; and
 - (e) any default by the Consignor in the performance or observance of the Consignor's obligations under these terms and conditions.
38. The Consignor acknowledges that the indemnity contemplated by clause 37 survives termination of any contract and includes any debt recovery fees, collection agency costs, and legal fees and expenses the Carrier incurs in order to enforce its rights, on an indemnity basis.

Limitation of liability and exclusion of bailment

39. To the extent permitted by law, the obligations of a bailor are excluded. The Carrier will not be responsible for any loss of, or damage to, or incorrect delivery of, or delay in the delivery of, any Goods (including chilled, frozen, refrigerated and/or perishable goods). This applies when such loss, damage, incorrect delivery, delay in delivery or non-delivery may be occasioned by the negligence or wrongful act of the Carrier or its Sub-Contractors (whether intentional or not).
40. To the extent permitted by law, every exemption, exclusion or limitation of liability, and condition contained in these terms and conditions applicable to the Carrier shall also be available to, and shall extend to protect, the Carrier's Sub-Contractors.
41. If notwithstanding clause 39, the Carrier is found liable to the Consignor, to the extent permitted by law, the Carrier's liability to the Consignor, whether under contract, in tort, pursuant to statute or otherwise for any loss, damage or injury is limited to, at the option of the Carrier:
- (a) supplying the Services again; or
 - (b) providing for the cost of having the Services supplied again.
42. The Carrier is not liable for loss of profit, economic or financial loss, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Consignor as a result of the Services supplied pursuant to these terms and conditions, and whether caused by the negligence, recklessness, or wilful negligence or misconduct of the Carrier's servants, agents, employees, Sub-Contractors or otherwise.
43. It is expressly agreed that all rights, immunities, and exclusions or limitations of liability conferred on the Carrier whether expressly or impliedly in these terms and conditions shall continue to be in full force and effect in all circumstances and notwithstanding any breach of contract or any condition hereby by the Carrier.
44. Nothing in these terms and conditions shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of Services pursuant to this agreement of all or any of the provisions the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

Subcontracting and assignment

45. The Consignor acknowledges that the Carrier reserves the right to subcontract the Services to be supplied (or any part thereof).
46. Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier to which the Carrier is entitled hereunder shall also be available and shall extend to protect:
- (a) all Sub-Contractors;
 - (b) every servant or agent of a Sub-Contractor;
 - (c) every other person (other than the Carrier) by whom the Services (or any part thereof) are provided; and
 - (d) all person who are or may be vicariously liable for the acts or omissions of any person falling with (a), (b), or (c) hereof and for the purpose of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons of them shall to this extent be or be deemed to be parties of the contract.

Miscellaneous

47. **Any proposed variation to these terms and conditions by the Consignor must be requested in writing. The Carrier may refuse any such request without providing reasons either orally or in writing.**
48. **Variations requested by the Consignor will only be binding upon the Carrier if they are in writing signed by an authorised officer of the Carrier.**
49. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
50. The Consignor acknowledges and agrees that this agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.
51. If two or more parties are included within the same defined term in these terms and conditions:
- (a) these terms and conditions have separate operation in relation to each of them;
 - (b) a liability or obligation of those persons under these terms and conditions is a joint liability or obligation of all of them and a several liability or obligation of each of them; and
 - (c) a right given to those parties under these terms and conditions is a right given severally to each of them.

THE ABOVE INFORMATION IS FOR THE CUSTOMER TO RETAIN